



November 22, 1999

Ms. Kristi LaRoe
Assistant District Attorney
County of Tarrant
401 West Belknap
Fort Worth, Texas 76196-0201

OR99-3357

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 129719, ID# 130244, and ID# 130938.¹

The Tarrant County Sheriff's Office (the "sheriff's office"), which you represent, received three separate requests for four specific mug shots. You ask that we consider whether the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the arguments you raise and reviewed the submitted information.

Section 552.108 excepts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or
- (3) it is information that:

¹We are addressing all three of your requests with this one letter ruling.

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state
[and]

(b) An internal record or notation of a law enforcement or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The sheriff's office has received three written requests for mug shots: two dated September 15, 1999 and September 23, 1999, respectively, and one date stamped October 18, 1999. In regard to the mug shot asked for in the September 15, 1999 request, you state that the subject of the mug shot has been arrested but not convicted. However, we are unable to determine from your statements or from the submitted records whether the criminal case itself remains

pending. To the extent that the criminal case is still pending, we find that section 552.108(a)(1) applies because the release of the mug shot would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1); *see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). To the extent that the criminal case has been dismissed or concluded in a result other than a conviction or deferred adjudication, we find that section 552.108(a)(2) applies because the mug shot concerns a completed criminal investigation that did not result in a conviction or deferred adjudication. Although section 552.108 may authorize you to withhold this mug shot from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.²

In regard to the mug shot asked for in the September 23, 1999 request, you state that the subject of the mug shot "was not convicted of the crime" for which she was arrested. However, the Tarrant County's Criminal Case Display that you enclosed indicates that the subject received probation and paid a fine of three hundred and fifty dollars. Accordingly, it appears that the criminal case regarding this mug shot concluded in either a conviction or a deferred adjudication. In regard to the two mug shots requested in the third request, you state that the subjects of these mug shots "have been arrested for public intoxication, pleaded 'nolo contendere,' and received probation under article 45.54 of the Code of Criminal Procedure." In other words, the criminal cases regarding these two mug shots are no longer pending, and each case concluded in a deferred adjudication. Therefore, neither section 552.108(a)(1) nor section 552.108(a)(2) applies to any of these three mug shots. Moreover, you have presented no argument that would invoke any other subsection of section 552.108. Accordingly, section 552.108 does not apply to the mug shot requested in the letter dated September 23, 1999, or to the two mug shots requested in the memorandum date stamped October 18, 1999.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information considered confidential under the common-law right to privacy. Information is protected by the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to

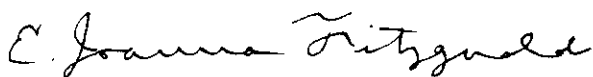
²Ordinarily, when information is excepted from required public disclosure under section 552.108, the governmental body must still release basic or "front page" information under section 552.108(c). Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). However, in this case no information was requested other than mug shots. Mug shots do not constitute basic information under section 552.108(c). *See* Open Records Decision No. 616 at 2 (1993); *see also* Open Records Decision No. 127 at 4-5 (1976). Accordingly, in regard to these two mug shots, there is no basic information that the sheriff's office must release under section 552.108(c).

the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests: (1) an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976). The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. The second individual privacy interest that implicates constitutional privacy involves matters outside the zones of privacy. To determine whether the constitutional right to privacy applies, this office applies a balancing test, weighing the individual's interest in privacy against the public's right to know the information. See Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)). We find that the three mug shots depicting suspects who received deferred adjudication do not trigger common-law or constitutional privacy concerns. See Open Records Decision No. 616 at 2-3 (1993).³ Accordingly, the sheriff's department must release these three mug shots.

However, we note that all three of these mug shots contain Texas drivers' license numbers. Section 552.130 of the Government Code excepts from required public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, while the sheriff's office must release the three mug shots, it must withhold the drivers' license numbers.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

³We note that section 552.101 does not incorporate the common-law tort of false-light privacy. Open Records Decision No. 579 at 3-8 (1990). Therefore, whether subjects of the mug shots were convicted or not is irrelevant to a privacy analysis pursuant to section 552.101.

EJF/nc

Ref: ID# 129719, 130244, and 130938

Encl. Submitted documents

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